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NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
SECOND APPELLATE DISTRICT
DIVISION TWO

CLARA VESELIZA BAKER, Plaintiff and Respondent, v. ALEXANDER COLLIN BAKER, Defendant and Appellant.	B286669 (Los Angeles County Super. Ct. No. LD068701)

APPEAL from an order of the Superior Court of Los Angeles County. Alicia Y. Blanco, Commissioner. Affirmed.

Alexander C. Baker, in pro. per., for Defendant and Appellant.

Yanny & Smith, Joseph A. Yanny and Charles Cardinal for Plaintiff and Respondent.

Alexander Collin Baker (Alex) appeals from a domestic violence restraining order (DVRO) issued against him for the protection of his former wife, Clara Veseliza Baker (Clara), after a contested hearing.[1] We find no error, therefore we affirm the order.

BACKGROUND

Both parties provide extensive background facts regarding the parties' marriage and the history of their business relationship. No citations to the record are provided. We disregard all factual information unsupported by citation to supporting documentation in the record. (Cal. Rules of Court, rule 8.204(a)(1)(C) & (a)(2)(B); *City of Lincoln v. Barringer* (2002) 102 Cal.App.4th 1211, 1239 [where brief "fail[s] to provide any citations to the record to support any of the assertions . . . [w]e . . . need not consider the matter"].)

PROCEDURAL HISTORY

Clara's request for DVRO and temporary restraining order (TRO)

On October 26, 2016, Clara filed a request for DVRO. Clara indicated that she was previously married to Alex, and together they had one child under the age of 18.[2] Clara sought a stay-away order, an order seeking to prohibit Alex from disseminating private information, and an order that Alex "[r]emove all blogs, private contracts, royalty statements, social security number, and any false, misleading [and] demeaning

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[1] The parties in this matter have the same last name. In addition, confusion arose in the trial court because Alex is petitioner in the dissolution proceeding but Clara is petitioner for the DVRO. To avoid such confusion, we refer to the parties by their first names. No disrespect is intended.

[2] The parties have an adult child as well.

information online." An attachment to the request for DVRO listed three other pending lawsuits between Clara and Alex.

Clara attached a seven-page declaration to her request for DVRO. She indicated that she is a singer, songwriter, producer, and composer, and that Alex was trying to destroy her livelihood. He publicized her private contracts, royalty statements, social security number, and date of birth, as well as the private information of people with whom Clara works. He contacted past, current, and future coworkers and spread "vicious rumors" about her, resulting in her finding no one interested in working with her. The harassment was causing her daily anxiety and fear, and causing her to lose her profession, as well as friends, business associates, and family.

In addition, Alex harassed her with multiple threatening emails and texts on a daily basis. He filed a false police report against her. Alex started a blog regarding litigation between them, as well as her private business contracts going back to 1996. He also posted her co-worker's private information. He informed Clara's boss, and other musicians, that he had done most of the work the couple produced over the years. He sent emails and letters to Clara's employers and other third parties accusing her of various crimes including fraud, forgery, and identity theft. Clara attached several examples. Alex disseminated her bank statements and private financial information.

Clara attested that Alex's texts and emails are "stalking." He was emotionally and verbally abusive. Clara included a sampling of such texts and emails in her declaration.

Clara further attested that Alex's abusive actions were detrimental to the couple's children. He damaged her reputation and caused her to be unable to earn a living. Clara requested the following order:

> "Accordingly, I am requesting that [Alex] be restrained from further disseminating any of my private information (business contracts, royalty statements, bank statements, information about our divorce, and any emails whatsoever from or to me); that he be ordered to immediately remove my private personal and financial information off the internet that he posted or directed anyone else to post; that any information disclosed by either party during discovery of this case be sealed; that he be ordered to immediately stop disparaging me to my children, my employers, or any third parties, that he be prohibited from videotaping my deposition, and that he be prohibited from texting and emailing me."

On October 26, 2016, a temporary restraining order (TRO) was granted in part, and a hearing set for November 16, 2016. The TRO prevented Alex from harassing, threatening, and contacting Clara, and included a stay-away order. Clara's request that Alex be restrained from disseminating information and required to remove information online was denied. The trial court noted that the proposed restrictions were too broad to be determined on an ex parte basis.

Restraining order issued after hearing

The hearing took place on a number of dates over the course of the following year. On September 29, 2017, the court issued its order granting Clara's request for DVRO. The court orally explained its decision. The court found that certain text messages evidenced emotional abuse, and read examples aloud in court. The texts included statements such as "I'm going to use this lawsuit to force you to allow me back," and "If you want me to stop suing you, you have to give me my daughters back." Alex admitted to being "unbelievably cruel" to Clara, to the point where she felt "abused and ridiculed and worthless." The court noted that Alex's actions and harassment reached a level such

that Clara's employer no longer wanted to work with her. Alex's pattern of conduct included posting confidential contracts, posting a blog, posting the last four digits of her social security number, and threatening to report Clara's tax preparer to the IRS. The court found that Alex posted private and sensitive information about Clara, to the point where she suffered intimidation, harassment, fear, anxiety, stress, and isolation. The court found that the dissemination of the material was in bad faith, "designed specifically to frustrate [Clara's] employment opportunity." The court found that a prohibition on dissemination of this information was not a restraint of free speech, as the speech "was not an essential part of any exposition of ideas and are of such slight social value, . . . that any benefit that may be derived from them is clearly outweighed by the social interest in order and morality."

With respect to lawsuits, the court noted there was evidence of seven lawsuits filed by Alex, which caused Clara serious emotional distress. The court found that Alex brought the lawsuits with the intent of harassing Clara. Further, Alex's conduct in engaging in "deliberate measures to prolong, delay and frustrate the resolution of this case," was calculated to "annoy, harass, and control" Clara. While the court acknowledged Alex's right to use the legal process, the court found that Alex "does not have the right to use it as a means to solely control" Clara, which the court found "he has done here." The court found Clara's testimony that she and the children were afraid of Alex to be credible.

The court further found that there had been a violation of the temporary restraining order, and the court was permitted to consider this violation in granting a permanent order. The violation involved contact with the couple's minor daughter. While acknowledging some confusion as to whether the TRO

precluded contact with the child, the court noted that Alex is a recent law school graduate who just sat for the bar, and yet he relied on Clara to tell him whether or not there were stay-away orders from the child.

The court articulated the following order:

> "Having considered all the relevant and admissible evidence in this case, the testimony of the parties, argument of counsel and [Alex], the court finds that [Clara] has satisfied her burden, by a preponderance of evidence, demonstrating that abuse has taken place in this relationship as defined by the Domestic Violence Prevention Act. And as a result, will grant the restraining order as requested for a period of three years."
>
> "By the terms of this order, [Alex] cannot harass, attack, strike, threaten, assault, hit, follow, stalk, molest, destroy personal property, disturb the peace, keep under surveillance, impersonate or block movements of [Clara]."
>
> "[Alex] must not contact, either directly or indirectly, by any means, including, but not limited to, phone, mail, e-mail, or by other electronic means, nor is he to take any action, directly or through others, to obtain address or location of [Clara]."

The court denied Clara's request that the parties' children be named as additional protected parties. The court specified that Alex was not to videotape Clara until further order, that he was prohibited from contacting her business associates in such a way that could be considered a continuation of the harassment she had suffered. Alex was ordered to refrain from publicizing any discovery documents he received.

The court issued a written restraining order after hearing on September 29, 2017. On November 27, 2017, Alex filed his

notice of appeal from the September 29, 2017 order on Clara's request for DVRO.

DISCUSSION

Alex raises 18 separate issues on appeal. In her responsive brief, Clara consolidated the issues into four categories, and Alex imitated this structure in his reply brief. We address Alex's contentions in seven categories. As set forth below, we find that the trial court did not commit constitutional error or abuse its discretion in issuing the restraining order.

I. Applicable law and standards of review

The Domestic Violence Prevention Act (DVPA) authorizes a trial court "'to restrain any person for the purpose of preventing a recurrence of domestic violence and ensuring a period of separation of the persons involved'" if evidence shows "'reasonable proof of a past act or acts of abuse.'" (*In re Marriage of Evilsizor & Sweeney* (2015) 237 Cal.App.4th 1416, 1424 (*Evilsizor*).) An order granting a protective order under the DVPA is reviewed for abuse of discretion. (*In re Marriage of Nadkarni* (2009) 173 Cal.App.4th 1483, 1495 (*Nadkarni*).) This is because the grant of a protective order "'"'rests in the sound discretion of the trial court upon consideration of all the particular circumstances of each individual case.'". . . [Citation.]' [Citation.]" (*Ibid.*)

Family Code section 6320 broadly provides that "disturbing the peace of the other party" constitutes abuse for the purposes of the DVPA. (*Nadkarni, supra,* 173 Cal.App.4th at p. 1497.) In granting Clara's request for a DVRO, the trial court found that Alex's conduct violated Family Code section 6320. To the extent that this finding required factual determinations, we review them for substantial evidence. (*J.J. v. M.F.* (2014) 223 Cal.App.4th 968, 975.) Under this standard, we inquire "'whether, on the entire record, there is any substantial evidence,

contradicted or uncontradicted,' supporting the court's finding. [Citation.]" (*Sabbah v. Sabbah* (2007) 151 Cal.App.4th 818, 822.) "'We must accept as true all evidence . . . tending to establish the correctness of the trial court's findings . . . , resolving every conflict in favor of the judgment.' [Citation.]" (*Id.* at p. 823.)

Alex makes several constitutional arguments, contending that the restraining order violates his constitutional rights to free speech and to petition the government. Notwithstanding the general applicability of the abuse of discretion standard, "when the trial court's order involves the interpretation and application of a constitutional provision, . . . questions of law are raised and those questions of law are subject to de novo (i.e., independent) review on appeal. [Citation.]" (*Prigmore v. City of Redding* (2012) 211 Cal.App.4th 1322, 1333.)

II. The trial court did not err in issuing the DVRO

A. Alex's acts of harassment in the form of litigation tactics are not constitutionally protected

We first address Alex's arguments that the trial court violated his First Amendment rights by finding that his civil lawsuits and litigation actions warranted protection under Family Code section 6320.

1. Applicable law

The First Amendment to the United States Constitution provides that "'Congress shall make no law . . . abridging the freedom of speech . . . .'" (*Balboa Island Village Inn, Inc. v. Lemen* (2007) 40 Cal.4th 1141, 1147 (*Balboa Island*).) However, the right to free speech "'is not absolute.'" (*Ibid.*) "'Liberty of speech . . . is . . . not an absolute right, and the State may punish its abuse.' [Citation.]" (*Ibid.*) A statute that prevents civil or criminal wrongs and is not aimed at protected expression, "does not conflict with the First Amendment simply because the statute can be violated by the use of spoken words or other expressive

activity. [Citation.]" (*Aguilar v. Avis Rent A Car System, Inc.* (1999) 21 Cal.4th 121, 134 (*Aguilar*).) In determining whether an injunction violates free speech rights, we must determine whether it is justified by a compelling state interest. (*Id.* at p. 165 (conc. opn. of Werdegar, J.).) Certain acts cause "unique evils that government has a compelling interest to prevent." (*Roberts v. United States Jaycees* (1984) 468 U.S. 609, 628.) Such "expressive activities that produce special harms distinct from their communicative impact . . . are entitled to no constitutional protection. [Citations.]" (*Ibid.*) The state has expressed, by statute and in the California Constitution, a compelling interest in protecting individuals from harassing conduct. (Fam. Code, § 6320; Code Civ. Proc., § 527.6; Cal. Const. art. I, § 1).[3]

2. Application

a. Non-physical harassment or abuse may properly be enjoined

First, we acknowledge that Family Code section 6320 "permits a court to enjoin a party from engaging in various types of behavior, including 'disturbing the peace of the other party.' [Citation.]" (*Evilsizor, supra,* 237 Cal.App.4th at p. 1424.) The DVPA has a broad protective purpose, entrusting the courts

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[3] Alex cites *DVD Copy Control Assn., Inc. v. Bunner* (2003) 31 Cal.4th 864 (*Bunner*), for the proposition that content-based restraints on regulation of speech are subject to heightened scrutiny. (*Id.* at p. 877.) *Bunner* involved the misappropriation of trade secrets, not a family law restraining order covering the type of harassing conduct discussed here. Further, *Bunner* specifies that content-based speech involves "'government censorship of subject matter or governmental favoritism among different viewpoints.'" (*Id.* at p. 879.) Because the restraining order does not regulate any particular content or viewpoint, it is content-neutral and not subject to strict scrutiny. (*Ibid.*) Thus, we decline to apply the strict scrutiny analysis here.

"'with authority to issue necessary orders suited to individual circumstances.'" (*Nadkarni, supra,* 173 Cal.App.4th at p. 1498.) It is not necessary for a party to prove physical abuse in order to obtain a restraining order under this section. (*Evilsizor*, at p. 1425.) Accessing and communicating to third parties private information may constitute abuse within the meaning of Family Code section 6320, particularly where such acts "constitute indirect and threatening conduct." (*Nadkarni*, at pp. 1496-1497.) This is true regardless of the means by which the offending party obtains the private information. (See *Evilsizor*, at p. 1429.) Further, the acts of accessing, reading and publicly disclosing private information may be enjoined when such acts "disturb[] the peace" of a party by "destroying the mental or emotional calm" of that individual. (*Nadkarni*, at pp. 1498-1499.) Harassing litigation, or litigation tactics, may also constitute both "indirect and threatening contact" as well as acts that "destroy[] the mental and emotional calm" of the party seeking the restraining order. (*Ibid.*)

b. There was no Constitutional error in enjoining Alex's litigation tactics

Evidence in the record supports the trial court's determination that Alex's conduct caused Clara to suffer shock and embarrassment, fear the destruction of her business relationships, and fear for her safety. (*Nadkarni, supra,* 173 Cal.App.4th at p. 1499.) The trial court noted evidence of seven lawsuits filed by Alex, which caused Clara serious emotional distress, all of which were brought with the intent of harassing Clara. The court also witnessed Alex's conduct in engaging in "deliberate measures to prolong, delay and frustrate the resolution of this case," which was calculated to "annoy, harass, and control" Clara.

Further, both parties have asked that we take judicial notice of an order dated June 7, 2018, declaring Alex a vexatious litigant.[4] Pursuant to Evidence Code section 452, we may take judicial notice of records of any court of this state. Because the parties do not dispute the propriety of judicial notice of this matter, we grant this request.

Because the vexatious litigant order merely validates the trial court's finding in this matter that Alex's litigation and litigation tactics have been abusive and harassing, we do not place undue emphasis on it. However, we note that pursuant to the June 7, 2018 order, Alex was declared a vexatious litigant pursuant to Code of Civil Procedure section 391, subdivision (b)(3). This statute defines a vexatious litigant as one who, "while acting in propria persona, repeatedly files unmeritorious motions, pleadings, or other papers, conducts unnecessary discovery, or engages in other tactics that are frivolous or solely intended to cause unnecessary delay." Accordingly, pursuant to Code of Civil Procedure section 391.7, subdivision (a), Alex is prohibited from filing any new litigation in the courts of this state in propria persona without first obtaining leave of the presiding justice or the presiding judge of the court where that litigation is proposed to be filed.

The state has a compelling interest in prohibiting vexatious litigants from continuing to file harassing litigation. (Code Civ.

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[4] On page 6 of his reply brief, Alex states that this court should not take judicial notice of the vexatious litigant ruling "because the ruling occurred in July 2018, some nine months after the DVRO." However, on the following page of the same brief, Alex states: "Alex hereby Requests judicial notice of the Vexatious Order attached to RRB as Exhibit 1." Because Alex proceeds to describe various findings set forth within the order, we presume that his intention was to request judicial notice of the document, as did Clara.

Proc., §§ 391 et seq.) Our vexatious litigant statute is constitutional. (*Wolfgram v. Wells Fargo Bank* (1997) 53 Cal.App.4th 43, 59 (*Wolfgram*).) As the *Wolfgram* court explained: "the general right of persons to file lawsuits -- even suits against the government -- does not confer the right to clog the court system and impair everyone else's right to seek justice." (*Id.* at p. 56.) Preventing such litigation tactics "does not impermissibly 'chill' the right to petition." (*Id.* at p. 59.)

The trial court was authorized to conclude that Alex's litigation tactics, which ultimately led to a vexatious litigant order, were abusive under the DVPA and did not constitute the type of speech afforded protection under the First Amendment. (*Evilsizor, supra,* 237 Cal.App.4th 1416.)

B. The trial court did not improperly restrict Alex's publication of documents and confidential information to third parties, contact of Clara's business associates, and videotaping a deposition

The trial court ordered that Alex shall not videotape Clara, and that any discovery documents obtained by Alex in litigation shall not be publicized. Alex complains that this blanket prohibition against publishing documents obtained in discovery extends to litigation, thus preventing him from filing documents obtained in discovery in court. Alex insists that the restraining order must be reversed as a violation of his right to petition. Alex provides no legal citations suggesting that such a restriction is overbroad.

As set forth above, Alex's right to petition is not unlimited. If abused, this right may be curtailed, as it has been. (*Balboa Island, supra,* 40 Cal.4th at p. 1147; *Wolfgram, supra,* 53 Cal.App.4th at p. 59.) The restraining order's limitation on Alex's right to videotape Clara, and his right to publicize documents obtained in discovery, are a result of Alex's abusive and

harassing actions. The restraining order is directed at Alex's harassing conduct. "'[S]ince words can in some circumstances violate laws directed not against speech but against conduct . . . speech can be swept up incidentally within the reach of a statute directed at conduct rather than speech. [Citations.] . . .' [Citation.]" (*Aguilar, supra,* 21 Cal.4th at p. 135.) So too here, Alex's abusive litigation tactics and publication of discovery have been caught up in this order limiting his abusive conduct.

After a lengthy contested hearing, the trial court determined Alex's conduct to be abuse under the DVPA. The records supports the trial court's determination that Alex was posting Clara's private information and engaging in abusive litigation tactics as a form of cruelty to Clara, to the point where she felt "abused and ridiculed and worthless." Alex engaged in such conduct in bad faith, "designed specifically to frustrate [Clara's] employment opportunity." Alex's rights to petition, and to videotape, are not the objects of the court's ruling, rather it was his abuse and harassment.

The court's order prohibiting contact with business associates is subject to the same analysis.[5] The evidence before the court showed that Alex publicized the private information of people with whom Clara works. He contacted past, current, and future coworkers and spread "vicious rumors" about her, with a result that no one wanted to work with her. The harassment

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[5] While the written order does not specifically address the restriction on contacting Clara's business associates, Alex asked for clarification of this in court. The court acknowledged that Alex had ongoing litigation against some of these business associates, but clarified that "in the event that that contact is determined to be in any way a continuation of the harassment that this court has found, . . . you run the risk."

caused her daily anxiety and fear, and caused her to lose her profession, as well as friends, business associates, and family. He sent emails and letters to Clara's employers and other third parties accusing her of various crimes including fraud, forgery, and identity theft. With these actions Alex damaged Clara's reputation and caused her to be unable to earn a living. The trial court had the authority to restrain Alex from contacting Clara's business associates to the extent that such contact perpetuated this harassing behavior. (*See Nadkarni, supra,* 173 Cal.App.4th at pp. 1496-1497.) To the extent that this order interferes with Alex's right to petition, such interference is incidental to the restriction on Alex's conduct, and is not unconstitutional. (*Aguilar, supra,* 21 Cal.4th 121, 135.)

Contrary to Alex's position, the trial court's order does not impose a content-based prior restraint on speech.[6] Alex has failed to show a constitutional violation.

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[6] As set forth above, a content-based restriction on speech censors an entire topic from discussion or disapproves of certain ideas expressed within that topic. (*Loshonkohl v. Kinder* (2003) 109 Cal.App.4th 510, 514.) "As an often cited example of this principle, the government may ban libel because it is an unprotected category, but it may not discriminate based on content by banning only libel that criticizes the government. [Citation.]" (*Ibid.*) Here, the trial court order is not content-based, but bans all harassing activity in which Alex has engaged -- including, incidentally, his abusive litigation.

C. Financial control and dissemination of bank account information

We next address Alex's arguments that the trial court abused its discretion in making its findings regarding his exercise of financial control over Clara and his dissemination of Clara's bank account information to the public.

Alex argues that we should reach a different conclusion from the trial court -- specifically, that Alex's handling of the money in June 2015 did not constitute abuse under the meaning of the DVPA. First, we note that the trial court's determination that Alex used improper financial control was not limited in time to June 2015. The court concluded that the evidence supported a finding that Alex exhibited such control, but read "just a few" of the texts that the court relied upon in making this finding. Those texts showed accusations by Clara that Alex had taken money from her, which he did not deny. In addition, they showed Alex using financial control to get Clara to agree to reconcile and get the family back together. In one text, after asking Clara to reunite, Alex states: "Please say yes. I'll bring the money." Alex also threatened, "I'm going to use this lawsuit to force you to allow me back." The text messages the court drew attention to at the hearing, which were only a portion of those the court relied upon, constitute substantial evidence supporting the trial court's decision. Because the decision is supported by substantial evidence, we do not second guess this factual determination. (*Sabbah v. Sabbah, supra,* 151 Cal.App.4th at pp. 822-823.)

Alex further argues that we should find an absence of substantial evidence that he disseminated Clara's bank records to the public. He claims he merely disseminated them to two tax preparers and his girlfriend. This fact alone provides substantial evidence that Alex disseminated the records to the public. This is particularly true because he did so without Clara's permission,

and for the purpose of harassing Clara. The evidence shows that Alex sent bank records to the tax preparer along with a threat that he would "call the IRS" if the tax preparer did not re-file Clara's taxes, and that Clara then received a call from the tax preparer "terrified" because he didn't want to "be in the middle of this." This evidence supports the trial court's determination that Alex improperly disseminated Clara's bank account information for the improper purpose of harassing her.

D. Impersonation and motion for new evidence

A similar substantial evidence analysis applies to Alex's argument that the trial court erred in finding that Alex used his girlfriend to contact a creditor and impersonate Clara. However, Alex has failed to provide sufficient citations to the record for this court to properly evaluate this claim. In order to challenge a trial court's factual findings, parties must "set forth in their brief *all* the material evidence on the point and *not merely their own evidence*." (*Foreman & Clark Corp. v. Fallon* (1971) 3 Cal.3d 875, 881 (*Foreman & Clark*).) Unless this is done, the claim of error is deemed forfeited. (*Ibid.*)

Alex argues that the evidence does not support the trial court's conclusion that Alex "used a third person, Lisa Margulies, to get [Clara's] information or contact a creditor and impersonate [Clara] in order to make changes to the account." Alex asserts that Clara's own testimony proves that Lisa Margulies did not impersonate Clara. However, he fails to cite the portions of Clara's testimony supporting this blanket statement. Alex purports to quote one portion of Clara's testimony where he cross-examined her on this issue.[7] In it, Alex asks Clara what she meant when she told Ms. Margulies she "had been cleared."

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[7] Alex failed to provide a citation to the record indicating the pages in the reporter's transcript where this exchange is located.

Clara responds that she was "placating her" because Alex "went ballistic" when she made the accusation of impersonation. Clara continues, "I was nervous and scared what else you are going to do to me." This evidence does not support Alex's argument that the trial court erred. In fact, it suggests the trial court was correct.

In short, Alex's argument is flawed in several respects. First, he fails to provide citations to the record showing all the material evidence on this point. Thus, his contention is forfeited. (*Foreman & Clark, supra,* 3 Cal.3d at p. 881.) We begin with the presumption that the record contains evidence to sustain the trial court's findings of fact. Alex bore the burden of proving that the evidence in the record does not support the trial court's findings. (*Ibid.*) He failed to do so.

Further, the portions of the record which Alex has purportedly quoted, without citation, do not support his position that the trial court was wrong.

Simultaneously with the filing of his reply brief on appeal, Alex filed a "Motion for New Evidence," in which he asks this court to take notice of the transcripts of telephone calls between Lisa Margulies and the Exxon Mobil credit card company. We deny the motion. "The general rule is that 'an appeal reviews the correctness of a judgment as of the time of its rendition, upon a record of matters which were before the trial court for its consideration.' [Citation.]" (*In re Elise K.* (1982) 33 Cal.3d 138, 149 (*Elise K.*).) This rule reflects the "'essential distinction between the trial and the appellate court . . . that it is the province of the trial court to decide questions of fact and of the appellate court to decide questions of law . . . .' [Citation.]" (*Ibid.*)

Civil Code section 909 provides a narrow exception to this rule, which is "to be used sparingly." (*Elise K., supra*, 33 Cal.3d

At p. 149.) Decisions declining to apply the exception found in Civil Code section 909 involve evidence which "(1) existed at the time of trial, (2) was contested on appeal or was cumulative of evidence that was contradicted at trial, and (3) was not conclusive on the question for which its admission was sought." (*Ibid*.) All of these problems are present here. First, the transcript involves a phone call allegedly made in January 2016, nine months before Clara filed the petition for DVRO. Thus, it existed at the time of trial, but Alex did not present it to the trial court. Second, although Alex has not provided a thorough discussion of the evidence at trial, nor citations thereto, it is likely cumulative of evidence that was contradicted at trial. Finally, it is not conclusive of the question on which it is sought: namely, to obtain a reversal of the trial court's factual finding that Alex caused a female to "get [Clara's] information or contact a creditor and impersonate [Clara]." Again, Alex does not provide a thorough discussion of the evidence at trial, and we must presume there was contradictory evidence in the record supporting the trial court's finding. Finally, Alex does not address the trial court's alternate finding that Alex used a female to get Clara's information.

Alex cites *Elise K.* for the proposition that, "if compelling new circumstances arise which undermine the basis for [an order affecting constitutional rights] during a parent's appeal from such an order, an appellate court may and should take cognizance of and consider those changed circumstances." (*Elise K., supra,* 33 Cal.3d at p. 150, fn. omitted.) Alex has not provided evidence of changed circumstances. He is merely providing additional, cumulative evidence that he failed to provide to the trial court.

Because the evidence Alex seeks to have considered on appeal suffers from these flaws, we decline to consider it.

E. Violation of the TRO, improper purpose for DVRO, propriety of stay-away order

The trial court found that Alex violated the TRO. Specifically, the court held:

> "The court can take and consider the fact that there has been a violation of the temporary restraining order in consideration in granting a permanent order in this case. And the court does find that the texts that were sent after the TRO, the communications that were made by [Alex] to [Clara], constitute a violation of the temporary restraining order."

The court acknowledged that there was "some confusion" among the parties as to whether the TRO specified a stay-away order from the children. Alex argues that Clara "waived" the TRO by asking Alex to pick up their daughter and texting Alex in ways that required responses, among other things. Alex contends that Clara and her attorney framed him to violate the TRO.

First, Alex provides no legal support for his theory that he was "framed" into violating the TRO. We need not address arguments that are not supported by citation to legal authority. (*City of Monterey v. Carrnshimba* (2013) 215 Cal.App.4th 1068, 1099 (*City of Monterey*) [absence of legal argument and citation to authorities in support of contention results in its forfeiture].) Furthermore, even if we were to consider Alex's substantial evidence argument, it fails. The text messages in the record show Clara making comments such as "follow the restraining orders." After a string of nine separate texts from Alex, Clara writes simply, "Stop." After yet another text from Alex, she writes, "Or I will block you." After another six texts from Alex, Clara writes, "If you do this you will harm Ryan. I suggest you don't do so." Then, "I am not keeping you from your kids. Only from harassing them and me." Further, as the court noted, on

another date Clara wrote "Stop texting me unless it's about Ryan." Then later, "Stop harassing me."

Regardless of whether there is contrary evidence in the record, these texts support the trial court's factual finding that Alex violated the TRO. (*Sabbah v. Sabbah, supra,* 151 Cal.App.4th at p. 822.)

The trial court's determination that Clara did not bring the request for DVRO for an improper purpose is also subject to review for substantial evidence. Alex claims that it was brought in order to avoid deposition. The trial court's ultimate finding that Alex was harassing Clara, and its determination that a restraining order was appropriate, undermines Alex's argument that it was brought for an improper purpose. (See, e.g., *Soukup v. Law Offices of Herbert Hafif* (2006) 39 Cal.4th 260 [to prevail on a malicious prosecution claim, plaintiff must show that the action was, among other things, pursued to a legal termination favorable to the plaintiff].)

The propriety of the stay-away order is reviewed for abuse of discretion. Alex argues that there were no allegations of physical violence, a stay-away order is wholly inappropriate. Alex refers to "conclusory buzzwords" that Clara used in her testimony, such as "stalk," "threat," and "can't get away." However, Alex argues that Clara admitted there was never any physical violence.

A physical threat is not a prerequisite to a stay-away order. (*People v. Petty* (2013) 213 Cal.App.4th 1410, 1422.) It is within the trial court's discretion to issue such an order for "an emotional violation." (*Id.* at p. 1423.) Given Clara's testimony concerning Alex's harassing and threatening behavior, the trial court acted within its discretion in granting such an order in this case.

F. Excluded evidence

Alex argues that the trial court improperly excluded evidence of Clara's state of mind. He sought to introduce evidence of Clara's belief that certain actions she undertook would disturb Alex's state of mind. Alex sought to introduce this evidence "to show that Clara does not actually believe that such actions constitute Domestic Violence, and that this action was brought for the primary purpose of defeating Alex's civil litigation."

Alex cites the following exchange:

> "Q. (By [Alex]): You were accusing me of libel, slander and defamation, right?
>
> "A. [By Clara] Yes.
>
> "Q. Did you think those accusations would disturb my peace of mind?
>
> "[Clara's attorney]: Objection; relevance.
>
> "The Court: Sustained.
>
> "[Alex]: If I may, your Honor, [Clara's] state of mind is not only relevant but it, in some sense is the only thing that is relevant to this entire case. I mean, she is trying to say that my words to other people disturb her state of mind constituting domestic violence, so that is her contention."

After a brief colloquy, the court stated:

> "Okay. As to the question of whether or not [Clara] believed that her text to you saying that you were being accused of libel, defamation and slander, whether or not she believed that disturbed your peace, I am finding is not relevant to these proceedings. So I am going to sustain that objection."

While Alex argues generally that the court should have admitted "state of mind" evidence, the objection quoted above is the only specific sustained objection that Alex referenced.

We apply the abuse of discretion standard to review any ruling by a trial court on the admissibility of evidence. (*People v. Waidla* (2000) 22 Cal.4th 690, 717.) This includes a decision on admissibility that turns on the relevance of the evidence in question. (*Ibid.*) Under this standard, we evaluate the trial court decision only to determine whether it "'falls[s] "outside the bounds of reason."' [Citations.]" (*Id.* at p. 714.)

First we again note that Alex has cited no legal authority for his proposition that speculation by the petitioner in a DVRO proceeding as to the state of mind of the alleged perpetrator is relevant. Due to his failure to support his argument with citation to legal authority, it is forfeited. (*City of Monterey, supra,* 215 Cal.App.4th at p. 1099.)

Further, the trial court did not abuse its discretion in sustaining the objection on the ground of relevance. The objection was made to the following question, "Did you think those accusations would disturb my peace of mind?" Alex's state of mind was not at issue in the proceeding; rather his actions were at issue. Thus, the trial court did not abuse its discretion in determining the question to be irrelevant.

As to Alex's further vague references to "state of mind" evidence, without reference to specific evidence that was excluded, we have no basis to find error.

G. Remaining arguments

We briefly address Alex's remaining arguments.

First, Alex argues that the standard set in *Nadkarni* and *Evilsizor* is too broad, and that we should set a higher standard for the imposition of a DVRO based on non-physical conduct.

Alex argues that the standard of extreme and outrageous conduct, used as the standard for a claim of intentional infliction of emotional distress, is more appropriate. (*Spackman v. Good* (1966) 245 Cal.App.2d 518, 528-529.) We decline to impose a higher standard of conduct for issuance of a DVRO when non-physical harassment is at issue. The Legislature has specified that a court may issue an order restraining an individual from, among other things, "disturbing the peace" of another individual. (Fam. Code, § 6320, subd. (a).) The *Nadkarni* court provided a thorough analysis of this language:

> "The ordinary meaning of 'disturb' is '[t]o agitate and destroy (quiet, peace, rest); to break up the quiet, tranquility, or rest (of a person, a country, etc.); to stir up, trouble, disquiet.' [Citation.] 'Peace,' as a condition of the individual, is ordinarily defined as 'freedom from anxiety, disturbance (emotional, mental, or spiritual), or inner conflict; calm, tranquility.' [Citation.] Thus, the plain meaning of the phrase 'disturbing the peace of the other party' in [Family Code] section 6320 may be properly understood as conduct that destroys the mental or emotional calm of the other party."

(*Nadkarni, supra,* 173 Cal.App.4th at p. 1497.)

This definition has been applied by the courts in subsequent cases, such as *Evilsizor*, over the almost 10 years since the *Nadkarni* court analyzed it. We presume the Legislature is aware of the judicial decisions interpreting statutory law and intends to adopt those decisions. (*People v. Tingcungco* (2015) 237 Cal.App.4th 249, 257 ["The Legislature is deemed to be aware of judicial decisions already in existence and to have enacted or amended a statute in light of those decisions"].) The Legislature's failure to amend Family Code

section 6320 in light of the *Nadkarni* decision, and later decisions applying the same standard, signal that the Legislature does not intend to invalidate those decisions. (*Tingcungco*, at p. 257.) It is not our role to do so.

Finally, Alex argues that the trial court did not adequately state the basis for this DVRO on the record. However, Alex fails to make any specific arguments as to what was lacking from the trial court's oral statement of its decision. We find that the court adequately stated the basis for its order. The court's oral explanation of its decision spans at least eight pages of the reporter's transcript. The court explains its findings of emotional abuse, harassment and threats that interfered with Clara's ability to earn a living and do business, publication of private and sensitive information, and abuse of the litigation process, among other things. The court's explanation appears to be thorough.

DISPOSITION

The order is affirmed. Respondent, Clara Baker, is awarded her costs on appeal.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS.

_____, J.
CHAVEZ

We concur:

_____, Acting P. J.
ASHMANN-GERST

_____, J.
HOFFSTADT